

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

COMMITTEE OF TORT
LITIGANTS and MICHAEL
SHEA,

Plaintiffs,

vs.

THE CATHOLIC DIOCESE OF
SPOKANE, et al.,

Defendants.

NO. CV-05-0274-JLQ

MEMORANDUM OPINION AND
ORDER DENYING DEFENDANTS'
MOTIONS TO DISMISS; ORDER SETTING
BRIEFING SCHEDULE ON BANKRUPTCY
COURT ORDERS

Before The Court is Defendant Individual Parishes and St. Phillip's Villa Inc.'s (Parishes) Motion to Dismiss the Committee of Tort Litigants' (Committee's) Adversary Complaint in the Diocese's underlying bankruptcy proceeding. The Defendant Catholic Diocese of Spokane (Diocese) has joined in this motion. Also **Before the Court** is Defendant Diocese's Motion to Dismiss Plaintiff Michael Shea's Adversary Complaint. Oral argument was heard on January 17, 2006. John D. Munding appeared on behalf of the Parishes. John W. Campbell and James Stang appeared on behalf of the Committee. Gerald Kobluk appeared on behalf of the Diocese. Frank Conklin appeared on behalf of Plaintiff Michael Shea. Having reviewed the record, heard argument, and being fully advised in this matter, **It Is Hereby Ordered** that the Parishes' Motion to Dismiss the Committee's Complaint and the Diocese's Motion To Dismiss Michael Shea's Complaint are **Denied**.

Background

A number of tort claimants, including Michael Shea, filed suit in State court against the Spokane Diocese for alleged sexual abuse by parish priests. On December 6, 2004, William S. Skylstad, as Bishop of the Catholic Church of the Spokane Diocese and

1 as successor-in-interest to the incorporator of the Catholic Bishop of Spokane,
2 Washington, a corporation sole, placed the corporation sole in a Chapter 11 bankruptcy
3 proceeding listing a number of individual Parishes as unsecured creditors based on funds
4 previously deposited by individual parishes with the Diocesan Deposit and Loan Fund (D
5 & L Fund). The real property of the individual parishes was listed by the Debtor as
6 property held for another person.

7 On December 22, 2004, Plaintiff Michel Shea filed an adversary proceeding against
8 the Diocese in the bankruptcy claiming that the parishes, schools, cemeteries and other
9 members of the diocesan family have no ownership interest in the property, and that all of
10 the parish churches, schools, cemeteries, etc. property is owned outright by the Diocese
11 without any interest therein being held by the parishes. On February 2, 2005, the Office
12 of the United States Trustee appointee a Tort Litigants Committee(Committee) comprised
13 of tort claimants, including Michael Shea. Another committee was appointed by the U.S.
14 Trustee to represent Future Tort Claimants, made up of those individuals claiming child
15 abuse by priests, but who had not yet filed lawsuits.

16 On February 4, 2005, the Tort Litigants Committee filed an adversary proceeding
17 against the Diocese and non-debtor individual parishes. Both adversary proceedings,
18 that brought by Plaintiff Shea and subsequently that brought by the Committee, sought to
19 declare the parish's real and personal property to be the property of the bankruptcy debtor
20 Diocese's estate, free and clear of any claim of a parish. The association of the individual
21 parishes (Association) filed a Motion to Dismiss. The Diocese and some non-parish
22 Defendants, including St. Philip's Villa, Inc. also joined in this Motion to Dismiss.
23 Subsequently, the Plaintiffs filed a Motion for Partial Summary Judgment and the debtor
24 Diocese filed a Cross-Motion for Summary Judgment.

25 On August 26, 2005, Bankruptcy Judge Patricia C. Williams denied the various
26 Motions to Dismiss, granted the Plaintiff's Motion for Partial Summary Judgment and
27 denied the Diocese's Cross-Motion for Summary Judgment. Those rulings have been
28 appealed to this court. Only the rulings on the Motions to Dismiss are before the court at

1 this time. The rulings on the Motions for Summary Judgment will be addressed at a later
2 date. Judge Williams's Orders only dealt with 22 of the 83 individual parishes, schools,
3 and cemeteries properties. Judge Williams granted Summary Judgment holding that the
4 real property of the 22 parish, school and cemeteries were owned by the Diocese free and
5 clear of any claim of the parishes. Whether the other 61 individual parishes, schools, and
6 cemeteries are subject to the same rulings is still before the Bankruptcy Court.

7 **Discussion**

8 As a preliminary matter, the court reminds the parties to keep in mind that this
9 court has not removed the bankruptcy proceedings from the Bankruptcy Court and is only
10 hearing the appeals of the August 26, 2005 rulings of the Bankruptcy Court.

11 The Association of Parishes, pursuant to an oral ruling of this court, has filed a
12 Motion to Dismiss in this court arguing that the Committee has no standing to bring the
13 adversary action and that the Bankruptcy Court never authorized the filing of their action.
14 The Association also contends that the Bankruptcy Court, being an Article I rather than
15 Article III court, has no jurisdiction over the adversary proceedings. The Association
16 further argues that because the individual parishes are non debtors, there is no jurisdiction
17 over them in Bankruptcy Court.

18 The Diocese filed a Motion to Dismiss the Shea adversary complaint, relying upon
19 the same jurisdictional and standing arguments presented by the Committee, but also
20 contending that because Mr. Shea is a part of the Committee, his interest is represented by
21 the Committee, thus precluding his individual action.

22 The basic jurisdictional and standing statutes applicable in this case are summarized
23 as follows:

24 28 U.S.C. § 1134 provides:

25 (a) The district court (and now the bankruptcy court of this district pursuant
26 to the General Order of the judges of this district court referring Title 11
cases to the bankruptcy court) shall have original and exclusive jurisdiction
of all cases under Title 11.

27 (b) District courts (and in this district the bankruptcy court) shall have
28 original, but not exclusive jurisdiction of all civil proceedings arising under
Title 11 or arising in or related to cases under Title 11.

1 28 U.S.C. § 157(a) authorizes Article III district courts to order that any or all cases
2 under Title 11 and any or all proceedings arising under Title 11 or arising in or related to a
3 case under Title 11 be referred to the bankruptcy judges of the district. The Article III
4 judges of this district have so ordered.

5 28 U.S.C. § 157(b)(1) authorizes bankruptcy judges, pursuant to district court
6 authorization, to hear and determine Title 11 cases, including core proceedings, subject to
7 review by the district court or in this district if all parties consent, by the Bankruptcy
8 Appellate Panel. In this case not all parties have consented to review by the Bankruptcy
9 Appellate Panel.

10 28 U.S.C. § 157(b)(2) defines core proceedings to include (A) **matters concerning**
11 **the administration of the estate and (E) orders to turn over property of the estate.**
12 This court is satisfied that the adversary proceedings in the Bankruptcy Court are core
13 proceedings, similar to an action construed to be a turn-over action. *See Kinkaid & John*
14 *Hancock v. Watson*, 917 F.2d 1162 (9th Cir. 1990). Under the circumstances of this case,
15 a Chapter 11 reorganization proceeding, it is essential that the creditors and the court
16 know what the assets of the estate are in order to vote and rule upon a Chapter 11
17 reorganization plan.

18 11 U.S.C. § 1102(a)(1) provides in relevant part that the United States trustee shall
19 appoint a committee of creditors as the trustee deems appropriate. The Tort Litigants
20 Committee has been duly appointed pursuant to 11 U.S.C. § 1102. 11 U.S.C. § 1103
21 defines the powers and duties of committees, including the Tort Litigants Committee in
22 this case, as including the power to “(2) investigate the acts, conduct, assets, liabilities and
23 financial condition of the debtor, the operation of the debtor’s business and the desirability
24 of the continuance of such business, and any other matter relevant to the case or to the
25 formulation of a plan;” and (5) “to perform such other services are in the interest of those
26 represented.”

27 11 U.S.C. § 1109 relating to Chapter 11 cases states: “(b) A party in interest,
28 including the debtor, the trustee, **a creditor’s committee**, an equity security holder’s

1 committee, **a creditor**, an equity security holder, or any indenture trustee may raise and
2 may appear and be heard on any issue in a case under this chapter.”

3 Clearly it is essential that the assets of the debtor Diocese be determined and the
4 court finds that the foregoing statutes authorize the Committee of Tort Litigants, a
5 creditors’ committee, and Mr. Shea, a creditor, to bring these adversary actions in a core
6 proceeding to have the assets of the debtor determined by the court, be it classified as a
7 turn-over action under § 157 (b)(2)(E), one involving the administration of the estate
8 § 157(b)(2)(A), or pursuant to § 1109(b) which authorizes a committee to appear and be
9 heard on any issue before the court. No statute or rule prohibits the Committee or the
10 creditor Shea from bringing such adversary actions.

11 The Association of Parishes claim that the Committee is not authorized to bring an
12 adversary action against the Diocese and Parishes without first making a demand on the
13 Trustee and if rejected by obtaining an order of the Bankruptcy Court authorizing the
14 initiation of such an action. This issue was not thoroughly addressed in the Bankruptcy
15 Judge’s Opinion.

16 At oral argument before this court on January 17, 2006, the court inquired of
17 counsel as to the existence of any specific statute that directly prohibits creditors from the
18 initiation of the adversary actions to determine the assets of the Debtor’s estate, or directly
19 authorizes the initiation of such an action by any party. Counsel for the Association of
20 Parishes stated to the court that a specific statute existed that states that “only the trustee
21 has the power to do that.” (See transcript, pages 17 & 18). Counsel relied upon 11 U.S.C.
22 § 544 & 545. However, § 544 only refers to the authority of a trustee to avoid a voidable
23 transfer of property by a debtor and § 545 only refers to the trustee avoiding “the fixing of
24 a statutory lien on property of the debtor . . .”. Neither of these statutes applies to the
25 issue before this court and even if so applicable, the statutes do not state “only the
26 trustee.” The court understands the argument of Mr. Munding to be that by analogy, the
27 *Hartford* case, *infra*, supports the argument that where a statute refers to the authority of a
28 trustee, **only** the trustee can take that action. However, in this case, there is no specific

1 statute referring to which parties, if any, may bring an action to determine the assets of the
2 Debtor.

3 Neither party, nor the court, has found a case directly on point on this specific
4 issue. The Association relies on *Hartford v. Union Planters Bank*, 530 U.S. 1 (2000).
5 However, that case merely held that 11 U.S.C. § 506(c) does not authorize an
6 administrative claimant to recover administrative expenses pursuant to § 506(c), which
7 provides that:

8 The trustee may recover from property securing an allowed secured claim the
9 reasonable, necessary costs and expenses of preserving or disposing of, such
property to the extent of any benefit to the holder of such claim. . . .

10 *Hartford* involved only the issue as to whether or not an administrative claimant
11 could recover the costs of attempting to preserve property. The Supreme Court merely
12 held that since the statute at issue only referred to “the trustee”, the right to recover such
13 costs was limited to the trustee and did not apply to non-trustees. None of the statutes
14 applicable here contain such a limitation. There is no statute that specifically refers to
15 who has the right to bring an adversary proceeding to determine the debtor’s assets.

16 The Association also relies on *In re: Smart World Technologies*, 423 F.3d 166 (2nd
17 Cir. 2005). However, *Smart World* was merely a holding that, absent exceptional
18 circumstances, F.R. B. P. 9019 does not allow the Bankruptcy Court to approve a
19 settlement of a claim pursuant to the request of creditors over the objection of a debtor in
20 possession. Rule 9019 specifically states that “On motion of the debtor in possession and
21 after notice and hearing the court may approve a compromise or settlement.” However,
22 the *Smart World* court also held that in certain exceptional cases, such as where the debtor
23 in possession refuses to bring a viable action on behalf of the estate, the Bankruptcy Court
24 could authorize a creditor’s committee to pursue the claim. *Id.* at 177. Having read the
25 Bankruptcy Judge’s Opinion herein, that court did not specifically authorize the bringing
26 of the adversary action by the Committee or Plaintiff Shea.

27 The Committee cites the court to an unpublished 6th Circuit case of *Long v. Oak*
28 *Park*, 117 F.3d 1420 (6th Cir. 1997) affirming a Western District of Michigan Bankruptcy

1 Court reported decision found at 211 B.R. 232 (1994). The standing issue was discussed
2 in the *Long* bankruptcy decision, but not in the unpublished 6th Circuit opinion. The
3 Bankruptcy Court held that an official creditors' committee had standing to bring an
4 adversary proceeding against a non-debtor third party for a determination of estate
5 property under Section 541 of Title 11. However, this holding by the *Long* Bankruptcy
6 Court was based upon a stipulation of the debtor and the creditor's committee which
7 specifically allowed the committee to pursue the litigation on behalf of the debtor because
8 of a conflict of interest between the debtor and the Defendant. This stipulation was not
9 specifically mentioned by the Committee in its brief to this court this case, and no such
10 *Long* stipulation existed herein.

11 As stated, *supra*, in a Chapter 11 reorganization case, it is essential that the creditors
12 and the Bankruptcy Court, know what the assets of the estate are in order to vote and rule
13 upon a Chapter 11 confirmation plan.

14 In this case, the Committee has been duly appointed pursuant to Section 1102, and
15 Section 1103, which sets forth the committee's power and duties including the right and
16 duty to investigate the acts, conduct, assets, liabilities, and financial condition of the
17 debtor and to perform such other services that are in the interests of those the committee
18 represents.

19 No-one on behalf of the Committee or Mr. Shea specifically asked the Bankruptcy
20 Court for permission to bring the adversary actions concerning the ownership of the parish
21 property. However, it is not essential to the Bankruptcy Court's jurisdiction to decide the
22 action, that specific permission be given to bring an adversary action to determine the
23 assets of the estate. To hold that the Committee and Shea were first obligated to make
24 demand on the debtor Diocese, and if rejected, to then obtain the permission of the court
25 would be contrary to the letter and the spirit of the bankruptcy laws and at this stage of the
26 proceedings, requiring such precedent actions would seem to the court to be a further
27 waste of scarce assets in this case. Also, to hold that only the trustee or debtor may bring
28 an action to determine the assets of the estate, particularly in a debtor in possession

1 Chapter 11 case, where the debtor has claimed that the parish assets are not part of its
2 bankruptcy estate, would be contrary to the letter and intent of the bankruptcy laws and
3 would prevent the court and the creditors from having full information as to all assets of
4 the debtor in voting and ruling upon a Chapter 11 reorganization plan.

5 The Debtor Diocese further argues that Mr. Shea is an individual unsecured creditor
6 with an unliquidated claim, who is himself a member of the Committee of Tort Litigants
7 and does not have standing. However, Mr. Shea filed his adversary complaint within two
8 weeks after the bankruptcy was filed. The Committee then filed its adversary complaint
9 two months later. Therefore the argument that Mr. Shea does not have standing because
10 the Committee filed an adversary complaint does not ring true because the Shea adversary
11 action was filed first.

12 **Conclusion**

13 This is an appeal of a ruling of the Bankruptcy Court denying Motions to Dismiss
14 in a Chapter 11 core proceeding. The court is satisfied that, under the circumstances of
15 this case, where the debtor has not included assets that the creditors contend are assets of
16 the debtor and subject to being sold to satisfy the claimants' claim, the Bankruptcy Court
17 has jurisdiction over the issue and the Committee of Tort Litigants and Plaintiff Shea have
18 standing to raise that issue before the Bankruptcy Court. It is at the heart of a Chapter 11
19 bankruptcy proceeding as to what the assets are of the debtor, so that the creditors who
20 vote upon a reorganization plan and the Bankruptcy Court can have before it a full
21 understanding of what is available to satisfy the claims of the creditors.

22 This court would have been more comfortable if the formality of bringing a motion
23 to authorize the filing of the adversary complaints had been presented to the Bankruptcy
24 Court, but I cannot find that it is required in order for the Bankruptcy Court to hear the
25 controversy or for the adversary claimants to have standing. It seems to the court that the
26 Bankruptcy Judge, in her opinion, not only denied the jurisdictional and standing Motions
27 to Dismiss, but also tacitly approved the bringing of the adversary complaints, because if
28 the actions had not been brought, there is no way the creditors and the Court could know

1 what assets are available for creditors' claims.

2 Therefore, the Motions to Dismiss filed by the Individual Parishes and the Debtor
3 Diocese are **Denied**. The rulings of the Bankruptcy Court on the Motions to Dismiss are
4 **Hereby Affirmed**.

5 **Motions for Summary Judgment**

6 As stated previously, the Bankruptcy Court granted the Committee's Motion for
7 Partial Summary Judgment and denied the Defendants' Cross Motion for Summary
8 Judgment as to the 22 parcels of real property. The Bankruptcy Court found there were
9 disputed issues of material fact as to the personal property, and therefore the ownership of
10 that property is not now before this court.

11 Without ruling, the court observes that the parties should specifically address the
12 question of whether there are material issues of fact in the matter *sub judice* as to the
13 interests of the parties in the parish real properties, including, *inter alia*, when the
14 properties were acquired, who negotiated their acquisition, how they were acquired,
15 whose monies was utilized to acquire those properties, and how the acquired properties
16 were titled. The Bankruptcy Court did not set forth in its Opinion the basis, if any, for
17 finding that there were no disputed material facts as to the real property. As observed, the
18 Bankruptcy Court did find there were disputed material facts as to the personal property.

19 Therefore, on or before March 15, 2006, the Debtor Diocese and the Association of
20 Parishes shall serve and file a joint brief on appeal of the Bankruptcy Court's Summary
21 Judgment rulings, referring, *inter alia*, by reference to arguments they raised in
22 Bankruptcy Court pleadings concerning disputed or undisputed material facts and any
23 additional authorities supporting their positions. The opening brief shall not to exceed 20
24 pages .

25 The Committee and Mr. Shea shall file and serve a joint response, including
26 reference to the Bankruptcy Court pleadings, not to exceed 20 pages, within 30 days from
27 the date of receipt electronically of the appellants' opening brief. The Diocese and
28 Parishes shall file and serve their joint reply, including reference to Bankruptcy Court

1 pleadings, not to exceed 10 pages, within 20 days from the date of receipt of the response.

2 Any party requesting oral argument shall file a request therefore and shall contact
3 Margaret Buckner at (509) 353-2180 to schedule a hearing date for argument if the court
4 grants the request for oral argument.

5 **IT IS SO ORDERED.** The Clerk is further directed to enter this Order and
6 forward copies to counsel.

7 **DATED** this 24th day of January, 2006.

8
9 s/ Justin L. Quackenbush

10 JUSTIN L. QUACKENBUSH
11 SENIOR UNITED STATES DISTRICT JUDGE
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